DAMAYANTI KANTILAL DOSHI & ORS

v.

JIGARLAL KANTILAL DOSHI & ORS

COURT OF APPEAL, KUALA LUMPUR
SHAIK DAUD ISMAIL JCA
SITI NORMA YAAKOB JCA
AHMAD FAIRUZ JCA
[CIVIL APPEAL NO: J-02-584-95]
11 AUGUST 1998

SUCCESSION: *Probate - Revocation of grant - Section 34 of Probate and Administration Act 1959 - Requirement of 'sufficient cause' - Proper test - Whether executors had discharged their duties in the interest and welfare of beneficiaries - Deliberate failure by executors to extract grant of probate and render accounts of estate - Whether provided sufficient cause for court to interfere - Removal of executors - Probate and Administration Act 1959, s. 34 - Public Trustee Corporation Act 1995 - Estate Duty Enactment 1941, ss. 45, 45(iii), 45A*

By his will, the deceased had appointed his wife and youngest son (the first and second appellants) as the joint executors of his estate, and subsequently, an order for the grant of probate was granted to the latter. Notwithstanding the order, the first and second appellants did not take any steps to extract the grant of probate. They also did not, *inter alia*, (i) ascertain the debts of the estate as required by the will; (ii) ascertain the assets of the deceased; (iii) prepare any accounts in respect of the administration of the estate, or (iv) take any steps to recover the estate's share when the deceased's property was sold off by the deceased's brother after his death. Up to the time of appeal, there was much hostility between the parties. Following an application by the beneficiaries ('the respondents') to revoke the probate under s. 34 of the Probate and Administration Act 1959 ('the Act'), the learned judge ruled that there was sufficient cause for the court to interfere, and consequently ordered, firstly, that the probate and hence the appointment of the first and second appellants as executrix and executor of the estate be revoked, and secondly, that the Official Administrator be appointed as the administrator. The appellants appealed and the main issue was whether the respondents had shown sufficient cause pursuant to s. 34 of the Act for the court to interfere with the wishes of the deceased.

Held:
Per Shaik Daud Ismail JCA

[1] Delay, *per se*, may not be fatal but delay without an explanation, as in this case, may be a sufficient ground for the beneficiaries to apply for the removal of an executor or an administrator of a deceased's estate.

[1a] The contention that the High Court will normally disallow the extraction of a grant of probate unless duty payable is finalised and paid is no answer to a failure to extract. Section 45 of the Estate Duty Enactment 1941 ('the Enactment') endows a discretion on the court to issue the grant if the Collector of Estate Duty has allowed payment of the estate duty to be postponed under s. 45A thereof. By virtue of s. 45(iii) of the Enactment, it is possible to settle the estate duty on a preliminary assessment of the assets of the deceased person with the qualification of a further supplementary assessment being raised in the event of assets being discovered later. On the facts, the delay to extract the grant of probate was clearly deliberate.

[2] Section 34 of the Act empowers the court to interfere if 'sufficient cause' is shown. The phrase 'sufficient cause' has not been defined, but the courts have always considered the welfare and interests of the beneficiaries of an estate as the paramount criterion in deciding whether or not there is sufficient cause to interfere. This is strictly an objective test.

[3] The duty to render accounts is one of the basic duties of all executors or trustees. By the terms of the deceased's will, the issue of accounts was all important since the residue for distribution could be derived at only after deductions of debts and expenses had been made. Without the accounts being rendered the beneficiaries would not have any means of knowing whether the estate was being administered properly.

[4] The appellants showed an obvious reluctance to render the accounts. The failure to ascertain the residue of the estate available for distribution after nearly four years of executorship suggested strongly that the executors were not serious in discharging their basic duty which was to undertake the distribution and the winding up of the estate as soon as was practicable.

[5] While friction and hostility between the parties might not be good reasons for the removal of the appellants as the executrix and executor, such reasons ought not to be disregarded. What more when, as here, there was no denial that the estate funds were being utilised to finance the spate of cases that the parties had initiated against each other.

[6] The first appellant was old and illiterate and to all intents and purposes this was a single executorship under the command of the second appellant. All the decisions pertaining to the estate were made by the second appellant solely, and this invited questions as to whether the first appellant was at all aware of the various actions taken by the second appellant.

[7] The learned judge was right in finding that there was enough material to support at least four of the seven allegations levelled against the appellants, and that they had not properly discharged their duties as executrix and executor in the interest and welfare of the beneficiaries. The respondents had shown sufficient cause pursuant to s. 34 of the Act for the court to interfere with the wishes of the deceased.

[8] The learned judge was right in finding that the Official Administrator would be able to act independently and expeditiously for the benefit of the beneficiaries. This notwithstanding, the court would be prepared to make other appointments if necessary. The parties shall have 14 days within which to name their candidate, failing which the order of the High Court would remain subject to the variation that the Public Trustee Incorporated be appointed instead.

[Appeal dismissed; order accordingly.]

*[**Bahasa Malaysia** Translation Of Headnotes]*

Melalui wasiatnya, semati telah melantik isterinya dan anak bongsu beliau (perayu-perayu pertama dan ke-2) sebagai wasi bersama bagi harta pesakanya, dan berikutan itu, pada 15 Oktober 1991, satu perintah untuk geran probet telah diberikan kepada pihak yang terkemudian. Meskipun terdapatnya perintah tersebut, perayu-perayu pertama dan ke-2 namun begitu, telah tidak mengambil sebarang langkah untuk mengambil geran probet tersebut. Perayu-perayu pertama dan ke-2 juga telah tidak, antara lainnya: (i) menentukan hutang harta pesaka tersebut sepertimana yang dikehendaki oleh wasiat tersebut; (ii) menentukan aset-aset simati; (iii) menyediakan sebarang akaun berhubung pentadbiran harta pesaka tersebut; atau (iv) mengambil sebarang langkah untuk mendapatkan semula bahagian harta pesaka tersebut apabila hartanah simati dijual oleh saudara lelaki simati selepas kematian pihak yang terdahulu itu. Fakta-fakta juga menunjukkan bahawa sehingga waktu rayuan, permusuhan telah berlaku antara pihak-pihak terbabit, yang terserlah melalui litigasi yang tidak sudah-sudah yang mereka mulakan terhadap sesama mereka. Berikutan dengan satu permohonan oleh responden benefisiari untuk membatalkan probet tersebut di bawah s. 34 Akta Probet dan Pentadbiran 1959 (‘Akta’), hakim yang bijaksana telah memutuskan bahawa, berdasarkan fakta, terdapat kausa

yang memadai bagi mahkamah mencampuri, dan akibatnya telah diperintahkan, pertama, bahawa probet tersebut dan dengan itu perlantikan perayu-perayu pertama dan ke-2 sebagai wasi harta pesaka tersebut dibatalkan, dan keduanya, bahawa Pegawai Pentadbir Pusaka dilantik sebagai pentadbir dengan wasiat harta pesaka tersebut dilampirkan. Perayu-perayu merayu, dan isu utama yang berbangkit adalah samada responden-responden, di hadapan hakim yang bijaksana, telah menunjukkan kausa yang memadai selaras dengan s. 34 Akta untuk mahkamah mencampuri dengan wasiat si mati.

Diputuskan:
Oleh Shaik Daud Ismail HMR

[1] Kelewatan, *per se*, mungkin tidak memudaratkan tetapi kelewatan tanpa penjelasan, sepertimana dalam kes ini, mungkin merupakan alasan yang memadai untuk benefisiari-benefisiari memohon untuk memberhentikan wasi atau pentadbir bagi harta pesaka simati.

[1a] Penegasan bahawa Mahkamah Tinggi selalunya tidak akan membenarkan pengeluaran geran probet melainkan duti yang kena dibayar menjadi muktamad dan dijelaskan, bukannya merupakan jawapan kepada kegagalan untuk mengeluarkan geran probet itu. Seksyen 45 Enakmen Duti Harta Pusaka 1941 menganugerahkan budibicara ke atas mahkamah untuk mengeluarkan geran jika Pemungut Duti Harta Pusaka telah membenarkan pembayaran duti harta pusaka ditangguhkan di bawah s. 45A Enakmen tersebut. Pada hakikatnya, menurut s. 45(iii), adalah mungkin untuk membayar duti pesaka berdasarkan suatu penilaian awal aset-aset simati dengan syarat bahawa suatu penilaian lanjut yang perlu akan dibuat jika aset-aset lain dijumpai kelak. Berdasarkan fakta-fakta, kelewatan untuk mengeluarkan geran probet jelas merupakan sesuatu yang disengajakan.

[2] Seksyen 34 Akta memberi kuasa kepada mahkamah untuk mencampuri jika "sufficient cause" ditunjukkan. Ungkapan "sufficient cause" telah tidak ditakrifkan, tetapi mahkamah sentiasa mempertimbangkan kebajikan serta kepentingan benefisiari-benefisiari harta pusaka tersebut sebagai kriteria yang paling penting dalam membuat keputusan samada terdapat sebarang kausa yang mencukupi untuk mencampuri. Ini adalah secara tegasnya merupakan satu ujian objektif.

[3] Kewajipan untuk mengemukakan akaun-akaun merupakan salah satu kewajipan asas kesemua wasi atau pemegang amanah. Menurut terma-terma wasiat si mati, isu akaun adalah amat penting kerana baki untuk pembahagian diperolehi hanya selepas penolakan hutang-hutang dan

perbelanjaan-perbelanjaan dilakukan. Tanpa mengemukakan akaun-akaun tersebut secara berkala, atau sama sekali sepertimana dalam kes ini, benefisiari-benefisiari tidak akan dapat mengetahui samada harta pusaka tersebut ditadbirkan dengan sempurnanya.

[4] Perlakuan perayu-perayu menunjukkan keberatan yang sungguh nyata untuk mengemukakan akaun-akaun tersebut. Kegagalan untuk menentukan baki harta pusaka yang ada untuk pembahagian selepas hampir empat tahun kewasian menunjukkan dengan tegasnya bahawa wasi-wasi tidak serius dalam melaksanakan tugas asas mereka yang mana adalah untuk menjalankan pembahagian dan penggulungan harta pusaka tersebut secepat yang dianggapkan praktis.

[5] Sementara pertelingkahan dan permusuhan antara pihak-pihak terbabit *per se* mungkin tidak merupakan alasan yang baik untuk memberhentikan perayu-perayu sebagai wasi, permusuhan yang sedemikian, jika didasarkan kepada cara dalam mana harta pusaka tersebut ditadbirkan, atau tidak ditadbirkan, adalah suatu perkara yang seharusnya tidak diketepikan. Apatah lagi, sepertimana keadaanya di sini, tidak terdapat penafian bahawa dana harta pusaka tersebut telah digunakan untuk membiayai kes-kes yang telah dimulakan oleh pihak-pihak terbabit terhadap satu sama lain.

[6] Ibu kepada perayu pertama adalah seorang yang buta huruf dan tua dan bagi semua tujuan kewasian ini adalah merupakan kewasian yang tunggal di bawah arahan perayu kedua. Ianya boleh dirujuk daripada fakta-fakta bahawa kesemua keputusan berhubung dengan harta pusaka tersebut dibuat oleh perayu kedua dengan sendirinya, dan ini membangkitkan persoalan samada perayu pertama mengetahui mengenai pelbagai tindakan yang telah diambil oleh perayu kedua atau samada beliau tidak memberi kebenaran terhadap tindakan-tindakan itu.

[7] Hakim yang bijaksana telah memberi keputusan yang betul bahawa terdapat bahan yang mencukupi untuk menyokong sekurang-kurangnya empat daripada tujuk dakwaan yang dikemukakan terhadap perayu-perayu, dan bahawa mereka telah tidak melaksanakan tugas-tugas mereka dengan sempurnanya sebagai wasi demi kepentingan dan kebajikan benefisiari-benefisiari. Responden-responden dalam erti kata yang lain telah menunjukkan kausa yang mencukupi selaras dengan s. 34 Akta untuk mahkamah mencampuri dengan kehendak-kehendak pewasiat.

[8] Hakim yang bijaksana juga mempunyai pendapat yang betul bahawa Pegawai Pentadbir Pusaka boleh bertindak secara bebas dan dengan segera dalam semua keadaan untuk kepentingan benefisiari-benefisiari. Meskipun demikian, mahkamah bersedia untuk membuat perlantikan atau perlantikan-perlantikan yang lain, sekiranya kedua-dua pihak dapat menyarankan calon yang dipersetujui bersama oleh mereka, yang akan bersedia untuk dilantik bagi menggantikan perayu-perayu pertama dan kedua. Dalam keadaan yang sedemikian, pihak-pihak terbabit mempunyai 14 hari untuk menamakan calon mereka, kegagalan yang mana menyebabkan perintah Mahkamah Tinggi kekal tertakluk kepada perubahan bahawa selaras dengan Akta Perbadanan Pemegang Amanah Raya 1995, "Public Trustee Incorporated" hendaklah sebaliknya dilantik.

[Rayuan ditolak; perintah sekadarnya.]

Cases referred to:

Fazil Rahman & Ors v. AR S Nachiappa Chettiar [1963] 29 MLJ 309 ***(foll)***
In the Goods of William Loveday [1900] P 154 ***(foll)***
Hunter v. Hunter & Another [1937] NZLR (SC) 794 ***(refd)***
Letterstedt v. Broers & Another [1884] 9 AC 371 ***(foll)***
Lord Sudley v. A-G [1897] AC II ***(refd)***
Re Khoo Boo Gong, deceased Khoo Teng Seong v. Teoh Chooi Ghim & Ors [1981] 2 MLJ 68 ***(foll)***
Shaw v. Thomas [1954] NZLR (SC) 585 ***(refd)***
Tan Khay Seng v. Tan Kay Choon & Anor [1990] 1 MLJ 51 ***(refd)***

Legislation referred to:

Estate Duty Enactment 1941, ss. 45(iii), 45A
Probate and Administration Act 1959, s. 34

Other source referred to:

Halsbury's, 4th edn, vol 17, para 1551

For the appellants - Cecil Abraham (Dhinesh Bhaskaran with him); M/s Shearn Delamore & Co
For the 1st & 3rd respondents - CV Das (Steven Thiru & Baidah Mohd Nor with him); M/s Skrine & Co
For the 2nd respondent - G Shankar; M/s Zaman & Assoc

[Appeal from High Court, Johor Bahru; Originating Motion No: 25-32-1994]

Reported by WA Sharif

JUDGMENT

Shaik Daud Ismail JCA:

This is an appeal from the decision of the Johor Bahru High Court which had on 29 July 1995, allowed an originating motion filed by the respondents herein. The respondents in their originating motion dated 17 September 1994, had applied under s. 34 of the Probate and Administration Act 1959 (hereinafter referred to as the 'Act') to revoke the probate granted to the first and second appellants as the executrix and the executor of the estate of the late Kontilal Prabhulal Doshi, known as K.P. Doshi (hereinafter referred to as the 'deceased'). They also applied for the appointment of the Official Administrator, in place of the first and second appellants, as the administrator with the will annexed of the estate.

The deceased died on 1 July 1991. Investigations into his death revealed that he had been murdered and his eldest son, the first respondent, was charged with the murder. The charge was later reduced to one of voluntarily causing grievous hurt, which charge, surprisingly, is still pending in the lower court to this date.

By his will dated 30 April 1991, the deceased left all his real and personal properties to the following:

1. His lawful wife, Damayanti Kantilal Doshi (the first appellant) 25%.
2. His eldest son, Jigarlal Kantilal Doshi (the first respondent) together with his wife, Shobhana Jigarlal Doshi (the second respondent) 25%.
3. His second son, Tilaklal Kantilal Doshi (third appellant) 25%.
4. His youngest son, Jogesh Kantilal Doshi (the second appellant) 25%.

An order for the grant of probate was made in favour of the first and second appellants herein as the executrix and the executor of the estate on 15 October 1991. The grant, however, has not been extracted even up to the time of this appeal, a lapse of seven years. Delay, *per se*, may not be fatal but delay without an explanation, as in this case, may be sufficient ground for the beneficiaries to apply for the removal of an executor or an administrator of a deceased's estate.

The respondent's complaints listed the following in support of their originating motion:

1. Failure to take preliminary steps in the administration of the estate.

2. Failure to render accounts or periodic accounts.

3. Failure to take appropriate steps to prevent dissipation of assets.

4. Mismanagement and/or misconduct in selling assets at an under value.

5. Neglect and/or mismanagement of the company known as Alu Eoe Sdn. Bhd.

6. Misconduct in taking steps to disrupt the ongoing business of the deceased.

7. Active hostility shown towards them and the institution of endless litigation.

It is pertinent at this stage to examine the law on the power of the court to revoke a grant of probate or letters of administration. Section 34 of the Act provides that:

> 34. Any probate or letters of administration may be revoked for sufficient cause.

The power to revoke a grant of probate is vested in the High Court and may be exercised if the court is satisfied that there is sufficient cause to do so. In spite of this power it cannot be gainsaid that we are sensitive that the courts generally would be slow to interfere with the express wishes of a testator. Nevertheless s. 34 of the Act empowers the court to interfere if sufficient cause is shown. The crucial question is what amounts to sufficient cause. The phrase "sufficient cause" has not been defined anywhere. In *Re Khoo Boo Gong, Deceased Khoo Teng Seong v. Teoh Chooi Ghim & Ors.* [1981] 2 MLJ 68, the Federal Court had occasion to consider that same phrase and at p. 69 of the report the following was expressed:

> The power to revoke a grant of probate or letter of administration is vested in the High Court by s. 34 of the Probate & Administration Act 1959 (Rev. 1972) and can be exercised for "any sufficient cause". However, there is no definition of what is sufficient cause. But, if in the words of Jeune, President, in the Goods of William Loveday, (1) "the real object which the Court must always keep in view is the due and proper administration of the estate and the interests of the parties beneficially entitled thereto" then the test of what is a sufficient cause is the due and proper administration of the estate and the interests of the beneficiaries. In our view, that is a strictly objective test.

(See also *Fazil Rahman & Ors. v. AR S. Nachiappa Chettiar* [1963] 29 MLJ 309 at 310; and *In the Goods of William Loveday* [1900] P. 154). The same test was adopted by the High Court in *Tan Khay Seng v. Tan Kay Choon & Anor* [1990] 1 MLJ 51 at 54. In Australia and New Zealand, the test appears to be whether the executor is fit to act, but the line of cases shows that the court adopted the sufficient cause test. (See *Hunter v. Hunter & Another* [1937] NZLR (SC) 794 and *Shaw v. Thomas* [1954] NZLR (SC) 585). From the line of cases, it can be seen that the courts have considered the welfare and interests of the beneficiaries of the estate as the paramount criteria in deciding whether or not there are any sufficient cause to interfere.

In the present case the High Court considered in detail the seven complaints levelled at the appellants: and after considering the numerous affidavits filed by both parties came to the conclusion that in at least four of the complaints, there are sufficient cause to interfere.

For the first complaint, it is not disputed that up to the time of the trial in the High Court, the appellants have not taken the first step of extracting the grant of probate. Probate was granted on 15 October 1991 some seven years ago. The contention that the High Court will normally disallow the extraction of the grant of probate unless the estate duty payable is finalised and paid is no answer to the failure to extract. Section 45 of the Estate Duty Enactment 1941 endows a discretion on the court to issue the grant if the Collector of Estate Duty has allowed payment of the estate duty to be postponed under s. 45A thereof. In fact it is possible, by virtue of s. 45(iii) thereof to settle the estate duty on a preliminary assessment of the assets of the deceased person with the qualification of a further supplementary assessment being raised in the event of assets being discovered later.

There was no denial whatsoever that the appellants did not take any step to ascertain the debts of the estate as is required of them by the will. In fact this could have been done without extracting the grant. There was also no denial that no steps had been taken to even ascertain and list out the assets of the deceased, as the will itself did not identify such assets. Since the distribution of the estate is to be made subject to and after payments of all the deceased's debts, funeral and testamentary expenses and estate duty, the ascertainment of the assets and liabilities of the estate is of paramount importance in order to determine how much each beneficiary's 25% share is worth. In *Lord Sudley v. Attorney General* [1897] AC II, Lord Halsbury LC at p. 16 observed:

> ... it is a condition precedent to know what the residuary estate is, and until that has been ascertained you cannot tell of what it will consist.

Therefore, the failure to ascertain the residue of the estate available for distribution after nearly four years of executorship suggest strongly that the executors are not serious about discharging their basic duty which is to undertake the distribution and the winding up of the estate as soon as is practicable.

On the complaint of the failure to render accounts or periodic accounts the conduct of the appellants showed an obvious reluctance to render such accounts. This is in spite of four years of executorship. Up to the date of the trial no accounts had been rendered. In fact the record shows that two months after the respondents filed their originating motion, an application was made by them to obtain an injunction to restrain the appellants from dealing in whatsoever manner in the assets of the estate. At the hearing for that application learned counsel for the appellants informed the court that accounts were being prepared but right up to the date of the judgment in July 1995, the accounts were neither prepared nor submitted. This is clear evidence of reluctance to render accounts or in any way be accountable as to the financial position of the estate. The very first time the accounts were filed was in December 1995 when this court ordered, as a condition of an order of stay of the Johor Bharu High Court order that the second appellant file and serve an affidavit containing the accounts to the respondents within one month of the date of the stay. The delay to extract the grant of probate is clearly deliberate for until that was done there is no obligation to distribute and wind up the estate.

The duty to render accounts is one of the basic duties of all executors or trustees. It is the duty of the personal representatives to keep clear and accurate accounts, and to be ready at all times to render such accounts when called upon to do so, see *Halsbury's* 4th Edn Vol 17 at para 1551 under "Liability to Account". By the terms of the deceased's will the issue of accounts is all important since the residue for distribution is derived at only after deductions of debts and expenses have been made. Without the accounts being rendered periodically or at all (as in this case), the beneficiaries would not have any means of knowing whether the estate is being administered properly.

On the failure to take steps to prevent dissipation of assets the respondents alluded to the sale of a shophouse at No. 40 Jalan Tuanku Abdul Rahman, Kuala Lumpur, held in the joint names of the deceased and his brother, B.P. Doshi. The brother had purportedly sold this property for a sum of RM1.0 million after the death of the deceased and had purportedly retained 50% of the purchase price which rightly belongs to the estate. Quite apart from stating that they objected to the sale, no steps had been taken by the appellants to recover the estate's share of the purchase price. As responsible executrix and

executor having the welfare and interests of the beneficiaries, the appellants should have taken steps firstly to restrain the sale and if this was unsuccessful to at least taken steps to recover the estate's share of the proceeds of sale.

From the facts adduced and the various suits filed in various courts by the respective parties, it is undoubtedly clear that as between the appellants in particular the second appellant and the first and second respondents, there exists not just animosity or disagreement between them but that their relationship can safely be said to be one of open and active hostility. That relationship is such that it would be nigh impossible for the second appellant to fairly and impartially discharge his duties towards the respondents/ beneficiaries.

This hostility has manifested itself in the endless litigation commenced by both parties against each other and these actions have produced a number of interlocutory orders that were sought and obtained in the form of injunctions, discoveries and appointment of receivers. This in turn have led to allegations of non-compliance with court orders which culminated in actions for contempt. There has not been any denial that estate funds were being utilised to finance the spate of cases which may not see the light at the end of the tunnel. On the criminal side, the first respondent was initially accused of the murder of the deceased. This murder charge was subsequently withdrawn and substituted with a charge of voluntary causing grievous hurt. The first respondent contends that the second and third appellants were responsible for making false allegations against him, resulting in the criminal proceedings. If this is not clear evidence of direct and open hostility, we do not know what is.

While it is true that friction or hostility between the parties *per se* may not be a good reason for the removal of the appellants as the executrix and the executor, such hostility if grounded in the manner in which the estate is being administered or not being administered, is a matter that ought not to be disregarded. In this respect Lord Blackburn in *Letterstedt v. Broers & Another* [1884] 9 AC 371 at p. 389 said:

> It is quite true that friction or hostility between trustees and the immediate possessor of the trust estate is not of itself a reason for the removal of the trustees. But where the hostility is grounded on the mode in which the trust has been administered, where it has been caused wholly or partially by substantial overcharges against the trust estate, it is certainly not to be disregarded.
>
> Looking therefore at the whole circumstances of this very peculiar case, the complete change of position, the unfortunate hostility that has arisen, and the difficult and delicate duties that may yet have to be performed, their Lordships can come to no other conclusion that it is necessary, for the welfare of the beneficiaries, that the Board should no longer be trustees.

Another very important feature of this case is that the deceased by his will had appointed his wife, the first appellant, and son second appellant as joint executors. In reality this is a single person executorship as the second appellant is in complete control of the estate. The first appellant mother is old and illiterate. She has always been a housewife and her name was used by the deceased who appointed her as director and a shareholder in several family companies whilst the second appellant is legally qualified. It does not leave much to the imagination that for all intents and purposes this is a case of a single executorship under the command of the second appellant. In the light of this scenario it can safely be inferred that all decisions pertaining to the estate are obviously made by the second appellant solely. This is evident in all the affidavits filed for the appellants as they are all deposed to singly by the second appellant without even an averment that he had been duly authorised by the first appellant to depose to the said affidavits on her behalf. This invites the question as to whether the first appellant is at all aware of the various actions taken by the second appellant or whether she approves of them.

Against this background, and having gone through the record of appeal ourselves, we agree with the finding of the learned judge that there are enough material to support at least four of the seven allegations levelled against the appellants, that they have not properly discharged their duties as executrix and executor in the interests and welfare of the beneficiaries. In the light of this, we also agree that the respondents had shown sufficient cause pursuant to s. 34 of the Act for the court to interfere with the wishes of the testator. In the light of the evidence we find that to allow the appellants to continue as executrix and the executor would not solve the numerous problems which have plagued the estate. We agree with the learned judge that the Official Administrator would be able to act independently and expeditiously in all respects for the benefit of the beneficiaries. We see no reason to interfere with the exercise of the discretion by the learned judge. We dismissed the appeal with costs and ordered that the deposit be paid to the respondent to go to account of their taxed costs.

In the course of the appeal it was argued on behalf of the appellants that if the court was minded to revoke the appointments of the first and second appellants as executrix and executor of the estate, it was not proper to appoint the Official Administrator in their places. In the light of this intention we had proposed that both parties suggest a mutually agreed candidate or candidates who is or are willing to be appointed in place of the first and second appellants. The court would be prepared to make such appointment or appointments. For this purpose we gave the parties a period of 14 days, failing

which the order of the High Court stays subject to the variance that pursuant to the Public Trustee Corporation Act 1995, the Public Trustee Incorporated be appointed instead.

This page is intentionally left blank